

UAC INSURANCE MUTUAL

Board of Trustees Meeting

Thursday, June 25, 1998, 9:30 a.m.

Utah Association of Counties Offices

A

G

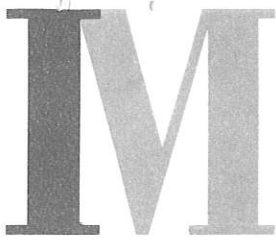
E

N

D

A

9:30	Call to Order	Gary Herbert
	Review of Board Members Absent	Gary Herbert
	Approval of May 28, 1998, Minutes	Gary Herbert
	Board Policy on Claim Expense Payments	Brett Rich
	Board Policy on Conflict of Interest Forms and Reporting	Brett Rich
	Non-Owned Vehicle Policy	Brett Rich
	Review and Update of Joint Policy Statements	Brett Rich
	<i>Management Review Discussion</i>	Gary Herbert
	Broker Report	John Chino
	NACo Financial Services Personal Lines Insurance	Gary Herbert
	Loss Control Manager's Report	Shawn Guzman
11:30	Lunch	
	Director's Report	Brett Rich
	Summary of March 1998 Financial Statements	Brett Rich
	Set Date and Time for Closed Meeting to Discuss Pending or Reasonably Imminent Litigation	
	Proposed Contract for Use of County Personnel & Equipment for Investigation of a Claims	Brett Rich
	Action on Litigation Matters	Kent Sundberg
	Set Date and Time for Closed Meeting to Discuss the Character, Professional Competence, or Physical or Mental Health of an Individual	
	Other Business	Gary Herbert
1:00	Adjourn	



UTAH ASSOCIATION
OF COUNTIES
INSURANCE MUTUAL

UACIM BOARD OF TRUSTEES MEETING

MINUTES

June 25, 1998, 9:30 a.m.
Utah Association of Counties Offices

BOARD MEMBERS PRESENT

Jerry Hess, *Vice President*, Davis County Deputy Attorney
Dannie McConkie, *Secretary/Treasurer*, Davis County Commissioner
Tony Dearden, Millard County Commissioner
Ty Lewis, San Juan County Commissioner
Monte Munns, Box Elder County Assessor-Treasurer
Tex Olsen, Sevier County Commissioner

BOARD MEMBERS ABSENT

Gary Herbert, *President*, Utah County Commissioner
Chad Johnson, Beaver County Commissioner
John Swasey, Duchesne County Commissioner

OTHERS PRESENT

Ed Phillips, Chairman, Law Enforcement Committee
Kent Sundberg, Chairman, Litigation Management Committee
Brent Gardner, UAC Executive Director
Brett Rich, Director, UACIM
Shawn Guzman, UACIM Loss Control Manager
Sonya White, UACIM Administrative Assistant
Rich Stokluska, GRMS Account Executive
Doug Alexander, McLarens Toplis Claims Manager

CALL to ORDER

Jerry Hess called the meeting to order and welcomed those in attendance.

REVIEW of BOARD MEMBERS ABSENT

Gary Herbert, Chad Johnson and John Swasey requested to be excused from this meeting due to prior commitments. Ty Lewis made a motion to excuse these Board members from this meeting. The motions was seconded and passed unanimously.

APPROVAL of MINUTES

The minutes of the Board of Trustees meeting held on May 28, 1998 were previously sent to the Board Members for review. Dannie McConkie made a motion to approve the minutes as written. Monte Munns seconded the motion, which passed unanimously.

BOARD POLICY on CLAIM EXPENSE PAYMENTS

Brett Rich explained that during the Insurance Department's audit, the examiner was concerned that the Claims Manager's settlement authority up to \$25,000 did not extend to expense payments but only indemnity. The McLarens Toplis contract states: *McLarens Toplis must notify the client prior to issuing any checks the total of which individually reaches or exceeds \$25,000 on any one claim.* Brett recommended that this clause be amended to clarify that this amount pertains to expense as well as indemnity payments instead of adopting a Board policy that may restrict the defense counsel hired to represent the Mutual. Claims payments are controlled by administration through the monthly review of loss reports, monthly Litigation Management Committee meetings and monthly Board review of the pending or reasonable imminent litigation. The Board agreed with Brett's recommendation and felt no formal action was necessary. Brett noted that the final examination report did not reference this issue.

BOARD POLICY on CONFLICT of INTEREST FORMS and REPORTING

Brett Rich explained that during the Insurance Department's audit, the examiner was concerned that the Conflict of Interest policy did not include the Director of UACIM. Therefore, Brett has drafted an amended policy to include *Director* wherever it refers to *Board Member*. Another concern was that there wasn't anything affirming that the Board and the Director were apprised of this policy statement, had conflicts to state or make required disclosures. Therefore, the following language has been added to section six: *Director of the Mutual and each Board Member shall complete a disclosure form provided by the Mutual at the first meeting of the Board during each fund year.* Brett will develop this form for the Board's review. Tex Olsen made a motion approving the Conflict of Interest policy as amended. The motion was seconded and passed unanimously.

NON-OWNED VEHICLE POLICY

Pursuant to the direction of the Board at the May 28, 1998 Board meeting, Brett Rich recommended that the Board request an endorsement from the excess carrier excluding non-owned/operated vehicles from the policy. The Board agreed that this exposure is too great of a risk for the Mutual and directed Brett to draft a proposed endorsement for the Board to review prior to the next meeting.

REVIEW and UPDATE of JOINT POLICY STATEMENTS

Brett Rich recommended that the Board rescind the *Eminent Domain and/or Inverse Condemnation* Joint Policy. Pursuant to the Board's request, defense costs up to \$25,000 per occurrence for inverse condemnation claims was endorsed onto the 1998 excess policy. Tony Dearden made a motion to rescind the Joint Policy that has been replaced by endorsement. Dannie McConkie seconded the motion, which passed unanimously.

Brett Rich drafted and proposed an amended resolution concerning *Payment of Claims in the Event the Loss Fund and Stop Loss Aggregate are Exhausted* (see attachment #1). The intent of the Board is unclear as the policy now reads. When the policy was adopted in 1995, pursuant to a recommendation of an Insurance Department examiner, the intent was not to dissolve the Mutual by using all its surplus to pay claims in the event the loss fund and stop-loss aggregate are exhausted in any one year but to fund a gap, if any, between the loss fund and the attachment point of the stop-loss aggregate policy. Tex Olsen made a motion approving the amended resolution. Dannie McConkie seconded the motion, which passed unanimously.

MANAGEMENT REVIEW DISCUSSION

Pursuant to the Board's direction at the May 28, 1998 Board meeting, Brett Rich reviewed his written responses to the recommendations listed in the Warren, McVeigh & Griffin management review (see attachment #2).

Actions were taken and direction given on the following items:

SUB-LIMITS (#5) Brett clarified that the sublimits listed in the policy are in addition to the Self-Insured Retention. This being the case, the Board was concerned with no-fault medical payments coverage which is not dependent on liability. Tony Dearden made a motion authorizing Brett to request from the excess carrier that no-fault medical payments be excluded from the policy. Ty Lewis seconded the motion, which passed unanimously.

CRIME/EMPLOYEE DISHONESTY (#12) Treasurers and any employee required by statute to be bonded are excluded from the Crime Policy. With the new legislation, employees don't have to be bonded if they're insured under statute creating quite an exposure for the Mutual. Therefore, the Mutual introduced a separate bonding program with the intent of excluding coverage under the policy. Warren, McVeigh & Griffin recommend that the Mutual carry coverage for those counties not participating in the bonding program. The Board directed Rich Stokluska to give them a quote at the next meeting.

FIDUCIARY LIABILITY (#14) The Board directed Brett Rich to send a letter to all member counties requesting information on how they are making their investments if they are not with the State Treasurer's Fund. Fiduciary liability is not needed if all members are investing with the State Treasurer's Fund.

The Board decided that a personal presentation by Warren, McVeigh & Griffin was not necessary but directed Brett to request a more detailed comparison and a summary document from Warren, McVeigh & Griffin.

BROKER REPORT

Rich Stokluska explained that he and John Chino were unable to determine how Warren, McVeigh & Griffin calculated the brokerage fee in their report. Approximately \$15,000 of their fees, after Gallagher's was obtained as the broker, were for optional coverage placements.

Rich reported that two additional properties were found in *Flood Zone A* locations—Iron County Visitor Center and San Juan Library in Monticello. Iron County reports that in connection with construction in 1996, the Visitor Center site elevation was raised to comply with FEMA requirements. Also, it appears that the location of the Library was mis-mapped by FEMA. He will gather all necessary information to correct these listings.

Rich explained that Coregis is still pursuing special districts and is in the process of quoting the Randolph Fire District. He is in the process of drafting a letter to announce and promote this program to the members.

NACO FINANCIAL SERVICES PERSONAL LINES INSURANCE

Board Members had the opportunity of participating in a telephonic test period for their personal lines insurance. Kent Sundberg was the only Board Member who participated and reported that it took over 30 minutes to get a quote and each line of insurance was higher in premium than what he is paying now. The UACIM Staff's experience was favorable on pricing but not on receiving the quote. NACO Financial Services is promoting this program and would like UACIM to endorse it. Some Board Members were worried about taking business away from their local agents. Monte Munns made a motion that this program may be something for the UAC Board to consider but should not be endorsed by UACIM at this time. Tony Dearden seconded the motion, which passed unanimously.

LOSS CONTROL MANAGERS REPORT

Shawn Guzman reported that UACIM co-sponsored the Law Enforcement Workshop with URMMA. Randy Means was an excellent presenter and will be considered for future training sessions.

Shawn continues to work with several other entities in drafting new *Physical Training Standards*. Randy Means has proposed conducting *Physical Training Standard Validation Studies* for the entire state.

Shawn explained that Representative Buckner might introduce legislation termed *Peace Officers Bill of Rights* at the next session. Representative Buckner claims this legislation protects peace officers by protecting their due-process rights and protects the counties by providing a means of dismissing bad officers. Actually it would hinder the ability of the Sheriff's Office and appears to create contention between Sheriff Office Administration and personnel. A motion was made recommending that the Utah Association of Counties Legislative Committee oppose this legislation if introduced. Monte Munns seconded the motion, which passed unanimously.

DIRECTOR'S REPORT

Brett Rich reported that he is in the process of scheduling an Advisory Committee meeting. He anticipates that the Committee will continue to be active, meeting quarterly or semi-annually. The Committee has given good input to the Board and helps members understand the Mutual better.

A letter was sent welcoming Weber County into the Mutual by Gary Herbert. Dave Wilson anticipates participating with the Litigation Management Committee and Kim Lee is the Insurance Coordinator for the County.

Brett met with the Washington County Commissioners, attorney and deputy attorney regarding the defense counsel list. Case in question is at the EEOC level—suit has not been filed. Brett explained the recommendation of the Litigation Management Committee and the Board decision on this matter. Because there was a concern that the Mutual should defend the case at the EEOC level, Brett agreed to research the issue further and if a majority of the members wanted defense at this level, he would take the issue to the Board. In researching the policy, Brett found that the Mutual has a duty to defend suit for damages alleged to be covered under the policy. Suit is defined as a civil proceeding including arbitration. In some Utah cases Brett found that a letter from the EPA constituted a suit for purposes of policy and duty to defend. However, in dealing with hearings before the EEOC courts hold that if the EEOC has not filed a suit on behalf of a claimant there was no duty to defend. Other pool clients of Gallagher's are uniformly not providing a defense at EEOC hearings. Brett detailed his finding in a letter with attached copies of cases to the Commission and Attorney. The Board directed Brett to work toward policy clarification on this issue with the carrier.

Brett reported that a pre-hearing conference at the Insurance Department is tentatively scheduled for July 1 relating to the Mutual's Bylaws amendments.

Brett explained that a meeting is scheduled for July 10 with UACIM, URMMA, ULGT and the School Boards Association to discuss alternatives to regulations imposed by the Insurance Department and NAIC. He will give the Board a report at the next meeting.

SUMMARY of MARCH 1998 FINANCIAL STATEMENTS

Brett Rich reviewed the March 1998 Financial Statements with Board. He reported that the surplus appeared to be increasing faster than anticipated. Brett found that Larson & Company was not including IBNR's in the losses. This has been corrected on the statements. The excess recoverable is a non-admitted asset that the Insurance Department will not allow the Mutual to include with surplus. The statements should be on schedule as of next month since all inaccuracies have been corrected. The Board directed Brett to request that Larson & Company include page numbers on the statements.

SET DATE and TIME for CLOSED MEETING

Tony Dearden made a motion to set the date and time for a closed meeting to begin at 1:15 p.m. on June 25, 1998, to discuss pending or reasonably imminent litigation. Ty Lewis seconded the motion, which passed unanimously.

Monte Munns made a motion to conclude the closed meeting at 1:40 p.m. on June 25, 1998. Tex Olsen seconded the motion, which passed unanimously.

ACTION on LITIGATION MATTERS

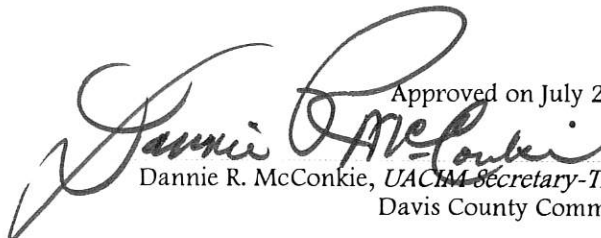
Tex Olsen made a motion authorizing payment of \$40,956.91 for property damage, physical damage and hauling expenses relating to claim number 801JUA988357. Monte Munns seconded the motion, which passed unanimously.

Ty Lewis made a motion approving the resolution authorizing an Interlocal Corporation Agreement with Utah County for use of County personnel and equipment for investigation of a claim.

OTHER BUSINESS

Brent Gardner wanted the Board to be aware that he has directed Brett Rich to begin the process of replacing his company vehicle. Also, in regards to the UACIM Director's job description, Brent explained that any changes will be handled administratively—a copy of the job description will be reviewed with the Board.

The next meeting of the Board of Trustees will be held on July 23, 1998 at 9:30 a.m. at the UAC offices.

 Approved on July 23, 1998
Dannie R. McConkie, UACIM Secretary-Treasurer
Davis County Commissioner

DRAFT

JOINT POLICY CONFLICT OF INTEREST

The Mutual recognizes that the various members of the Board of Trustees and the Director for the Multi-line Mutual bring to the Mutual a number of perspectives and interests that are created by the nature of the elective and appointive offices which they hold in their respective counties. The Mutual recognizes that the members of the Board of Trustees and the Director, accordingly, need a benchmark, criterion or standard against which to balance the competing interest they represent.

This policy is an attempt on behalf of the Mutual to provide guidelines to the members of the Board of Trustees and the Director regarding conflict of interest. It is the intention of the Joint Policy Committee that this policy would mesh with the Joint Policy on Board Member and Director Responsibility and would provide practical guidance to Board Members and the Director in fulfilling their responsibilities as Board Members or Director.

1. Board Members and the Director shall not request, receive, or accept a gift or loan for themselves or another if:
 - a. it tends to influence the Board Members or the Director in the discharge of his or her official acts as a Board Member or Director; or
 - b. she/he, within two years, has been involved in any official act directly affecting the donor or lender or knows that he/she will be involved in any official act directly affecting the donor or lender in connection with his or her membership on the Board or as the Director.
2. The prohibition set forth in Section 1 above shall not apply to:
 - a. an occasional nonpecuniary gift, insignificant in value;
 - b. an award publicly presented in recognition of public service;
 - c. a commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of the state to engage in the business of making loans; or
 - d. a political campaign contribution, provided that such gift or loan is actually used in a political campaign and is subject to Utah law regarding such gifts or loans.
3. Board Members shall disqualify themselves from participating in any official action of the Board that affects a business in which that Board Member has a financial interest as defined in Sections 67-16-8 and 67-16-9 Utah Code Annotated 1953 as amended.
4. Board Members shall not acquire a financial interest at a time when they believe or have reason to believe that it will be directly affected by their official action on the Board.

5. Board Members and the Director shall not use or divulge to any person confidential information acquired by virtue of their membership on, or participation with, the Board for their or another's private gain. Confidential information for the purpose of this paragraph shall be defined as all information disclosed or discussed in any executive session of the Board and any information disclosed or discussed in any meeting of the Board which is confidential under law, statute or practice and which is otherwise not available to the public.
6. The Director of the Mutual and each Board Member shall complete a disclosure form provided by the Mutual at the first meeting of the Board during each fund year. That completed form shall affirm the persons awareness of this policy statement and either state that no described conflicts exist, or make all required disclosures.
7. The information on the disclosures, except for the valuations attributed to the reported interests, shall be made available by the Secretary of the Board for inspection by any Mutual member county representative. The valuation shall be confidential for all purposes except for proceedings for violation of the disclosure requirement of this policy.

DRAFT

**A RESOLUTION OF THE UAC INSURANCE MUTUAL
ADOPTING A POLICY CONCERNING THE PAYMENT OF
CLAIMS IN THE EVENT THAT THE LOSS FUND IS EXHAUSTED
IN ANY ONE YEAR IN WHICH THE AMOUNT OF THE LOSS FUND
IS LESS THAN THE ATTACHMENT POINT OF THE STOP LOSS
AGGREGATE POLICY**

WHEREAS, Utah Association of Counties Insurance Mutual, (hereinafter referred to as "UACIM"), purchases excess insurance on behalf of member counties including specific excess and stop loss aggregate, which excess insurance is subject to a self insured retention that is paid from the UACIM loss fund; and

WHEREAS, UACIM by and through its Board of Trustees, has deemed it appropriate to adopt a policy for UACIM to be implemented in the event that the Loss Fund is exhausted for any one year and the attachment point of the Stop Loss Aggregate Policy is greater than the Loss Fund; and

WHEREAS, UACIM seeks to clarify all previous statements or policies regarding such funding;

NOW, THEREFORE, the policy adopted by the UACIM Board of Trustees is as follows:

1. UACIM will combine two or more claim years in order to fund the year with the negative balance. UACIM will also pay out existing filed claims as losses and expenses are presented to UACIM, until the total reaches the attachment point of the stop loss aggregate, or until all funds are exhausted, whichever occurs first; and
2. All losses and expenses not paid from UACIM funds will revert to and be the responsibility of the member County against which the particular claim was filed.
3. The Resolution adopted on August 3, 1995, concerning the payment of claims in the event that the loss fund and stop loss aggregate of the UAC Insurance Mutual are exhausted during any one year, is repealed.

RESOLVED AND ADOPTED this ____ day of _____, 1998.

UTAH ASSOCIATION OF COUNTIES
INSURANCE MUTUAL

By: _____

GARY R. HERBERT, President

1

A

Index of Recommendations – Consultant's Report

Coverage Agreement

1. Consider revising the Coverage Agreement to describe more accurately that UACIM's program is funded first-dollar insurance, not self-insurance.
2. Consider developing a coverage memorandum to define the program coverages in a way easier for the members to understand than the current commercial package policy.
3. Keep the current "maintenance" deductibles, but look for ways to gather data on the deductible claims in order to help in making future decisions.

Response to items 1-3: The current form purchased from Great American is based on the language developed by "Insurance Services Office" (ISO). Because it is standard policy language, modifications are made through a series of endorsements and exclusions that make the form even more difficult to understand. However, when the Mutual accepted the Great American program, the company agreed that if the Mutual wanted to develop its own form, the company would act as a reinsurer instead of an excess carrier.

Some aspects of reinsurance made that arrangement inappropriate during the past two years. Now, with a more solid financial condition, the problems with reinsurance are not a factor and the Mutual has been working to develop its own policy form. Since we hope this new form will be ready for the coming year, the recommendation is that clarity will best be achieved through that process.

Core and Optional Insurance Coverages

4. Continue to look for opportunities to provide coverage enhancements that meet the members' needs but do not jeopardize the stability of the self-funded program.

Response to item 4: This is a good recommendation, but very general. A primary goal of the Mutual is to increase benefits to the members wherever possible. Many enhancements are mentioned later in these recommendations. Others include considering a workers compensation program, limited defense for FLSA claims, etc.

Property Insurance Program

5. Increase or eliminate the sub-limits for such exposures as increased cost of construction, EDP extra expense and unnamed locations.

Response to item 5: UACIM provides the following sub-limits to members:

Extra Expense	\$1,000,000 per county
Increased Cost of Construction	1,000,000 per occurrence
Builders Risk	5,000,000 per occurrence
Flood	5,000,000 annual aggregate

Flood Zone A	\$1,000,000 annual aggregate
Earthquake	5,000,000 annual aggregate
Pollutant Clean-up	250,000 one-time limit
Unnamed Locations	100,000 per occurrence
Accounts Receivable	100,000 per county
Transit	100,000 per occurrence
EDP Extra Expense	50,000 per county
Fine Arts	50,000 per county
Medical Payments	5,000 per occurrence

The EDP Equipment/Media and Valuable Papers amounts are scheduled on the property list submitted by each county.

Safeguards:

- 1) Counties submit information each year at renewal;
- 2) Automatic coverage – 90 days to report new locations;
- 3) Unintentional errors & omissions endorsement; and
- 4) Unnamed locations sublimit of \$100,000.

In addition, the underwriter has verified that all limits in the Great American package policy are in addition to the SIR. Therefore, the limit for Medical Payments for example is actually \$255,000. Considering this, while always open for discussion, the sub-limits appear appropriate at this time.

6. Determine whether some counties may need business interruption or rental income coverages.

Response to item 6: Business Interruption, or Business Income, provides coverage for the following:

- 1) Loss of revenues or income
- 2) Continuing expenses
- 3) Payroll expense

Examples of continuing expenses are interest payments on a mortgage, insurance premiums and professional fees if on a retainer basis.

Payroll expenses can include salaried employees as well as hourly employees.

The Mutual has not seen significant exposure in this area with the counties. However, some fairgrounds facilities may fall into this category. More information would help the analysis.

7. Amend the Loss Conditions, Paragraph C.10 to require a county to resume operations as quickly as "reasonably" possible.

Submitted to Insurance Company for review.

8. Amend the Loss Conditions, Paragraph J, "Vacancy" to provide a vacancy period longer than 60 days.

Response to item 8: Submitted to Insurance Company for review. This is a standard policy provision policy, which can usually be amended for just cause.

9. Delete the following sentence from the Loss Conditions, Paragraph J: "A building is vacant when it does not contain enough business personal property to conduct customary operations."

Response to item 9: The Consultant believes that any definition may restrict coverage and would prefer to leave "vacancy" undefined. Submitted to Insurance Company for review.

10. Amend the Loss Conditions, Paragraph K.1, "Valuable Papers" to include the cost of research to restore such papers.

Response to Item 10: Cost of research to restore valuable papers is not excluded in the form and is therefore covered.

11. Amend the Additional Coverages, Paragraph 4, "Collapse" to include the perils of weight of snow and ice in addition to the "weight of rain that collects on a roof."

Submitted to Insurance Company for review.

12. Increase the limit for crime/employee dishonesty to at least \$1 million.

Response to item 12: Most employees for whom there is an exposure in this area are required by statute to be bonded or insured to a specific level. The Great American package excludes treasurers and all employees required to be bonded. When the Legislature changed the statute last year to require either a bond or liability insurance for these specific officials/employees, the Board addressed the question of whether the Mutual covered those employees for purposes of the legislation. The Board determined that although some of those employees may be covered under the policy, the better solution was to find an appropriate bonding program. That program is now in place for those counties choosing to participate. The intention is to provide coverage outside the loss fund because the increased exposure was not anticipated.

The Consultant agrees that most of the exposure arises from this group of employees, but still believes the exposure is great enough, and the market is soft enough that the additional limits could be added for little cost and would better protect the members. Therefore the Mutual should at least request quotes.

13. Evaluate the option of purchasing a separate employment practices liability (EPL) policy as part of the excess program or improve the excess EPL policy wording.

Response to item 13: The Consultant feels strongly that EPL coverage is inexpensive in today's market and would provide coverage in some areas that are currently excluded, such as intentional acts. Submitted to Insurance Company for review.

14. Assess the need to add fiduciary liability as a core or optional insurance coverage.

Response to item 14: Fiduciary Liability coverage is intended to protect the individual rather than the entity.

The coverage is typically needed, and often required, for those individuals who are involved in the decision-making process for the entity's employees pension plans, investment vehicles such as mutual funds, savings and thrift plans, or any other similar plans. Fiduciary Liability coverage may be appropriate if:

- 1) the individuals involved have any optional judgements regarding investments;
- 2) the decision is made by the insured (to direct funds); or
- 3) the decision to direct funds is not made by an outside organization.

If members are investing only with the State Treasurer's Fund there is probably little exposure.

15. Clarify to the members that the policy does not cover a county's liability for failure to supply utility services.

Response to item 15: If counties are providing utility services, especially electricity, they should have this coverage. The premise has been that they are not currently providing those services. There could be a situation where a special district is responsible for such things as water & sewer services. The members do need to know that no such coverage is provided now and that they should evaluate any such potential exposures.

16. Amend the policy to substitute the term "county" for "municipality" wherever it occurs.

Response to item 16: The endorsement has been requested. There are four forms that reference "municipality" as opposed to "county". They are as follows:

Nurses Professional Liability for Municipalities and Schools
EMT's and Paramedics Professional Liability (Municipal Program)
Airport/Aircraft Exclusion (Municipal Program)
Inland Marine – Declarations Page

These are forms that are filed and approved for use with the State of Utah and are used for various types of Public Entity accounts.

17. Have the broker clarify that the medical payments insurance is primary and not subject to UACIM's self-insured retention. Alternatively, delete medical payments from the program altogether.

Response to item 17: As discussed earlier, the sub-limit for medical payments is excess of the SIR. However, a \$255,000 limit seems inappropriately high for this coverage. An endorsement should exclude either the SIR amount or the entire coverage.

18. Attempt to add liability coverage for snowmobiles in addition to golfmobiles.

Response to item 18: There is currently no exclusion for liability for snowmobiles. The consultant relates that this recommendation is included because there is an endorsement for golf carts and he believes the two exposures should be treated similarly. However, it seems unlikely that adding an endorsement for every separate exposure is the proper way to handle the problem. Unless they are excluded somewhere in the policy, omitting the golf cart endorsement may be more appropriate.

Great American needs to know the potential exposure for this coverage. In order to properly underwrite the risk, UACIM needs to determine the number of snowmobiles being used by all of the counties and for what purpose.

Umbrella Insurance Program

19. Amend the umbrella schedule of underlying insurance to show the correct policies.

Response to item 19: This has been requested and an endorsement should follow showing the correct policy numbers.

20. Amend the umbrella policy to include employer's liability excess of underlying coverage.

Response to item 20: At this point, Arthur J. Gallagher & Co. would not recommend scheduling the employers liability on the umbrella. Currently, there are 23 members, all of which purchase their workers compensation coverage from different sources, with various limits, and some could possibly be self-insured.

Until there is a way of tracking the policy numbers, insurance companies, effective dates, premiums, and limits, this really causes more problems administratively than what it is worth to provide the coverage.

In addition, the underwriters did not originally rate for this exposure. There may be an increase in annual premium cost once they have received the information.

21. Amend the umbrella policy to provide coverage for liability arising out of dams and reservoirs (provided by the primary policy).

Submitted to Insurance Company for review.

22. Amend the umbrella policy to include discrimination within the definition of personal injury.

Response to item 22:

GL	POL	LAW
Not included under Definition of Personal Injury.	Not excluded	Included

- Discrimination is excluded under the primary General Liability policy.
- Umbrella Follows-Form (includes) with the Public Official's and Law Enforcement Liability coverage parts in the underlying.
- It's not the intention of the Underwriter to "drop down" and provide primary coverage for discrimination.
- Coverage provided either under the POL or LAW. The GL would potentially allow claims to be under two sections (POL or LAW, and GL coverage parts).
- Opens up UACIM to additional coverage sections.

23. Amend the umbrella policy to provide coverage for all volunteers (provided by the primary policy).

Submitted to Insurance Company for review.

Optional Insurance Program

24. Amend the DIC policy to include as covered property all unlicensed vehicles and mobile equipment.

Response to item 24: Agree that these items should be covered and while they are not specifically excluded we will request clarification from the carrier.

Financial Condition

Current Condition

25. Continue to emphasize loss control and claims management to reduce claims frequency and severity.

Response to item 25: We agree that these areas are vital to the success of the Mutual. They will continue to receive significant emphasis.

Per Loss Excess Insurance Program

26. Seek to maintain the current per-loss retained limits offered by the Great American excess insurance program.

Response to item 26: The same SIR limits have been in place since 1992 and we see no reason for them to change so long as the cost benefit analysis doesn't.

Underwriting and Loss Control Procedures

Underwriting Data

27. Educate the members about the importance of reporting complete and accurate data for three reasons: improved negotiations for the excess program, more equitable premium allocations, and less problems with loss adjusting.

Response to item 27: This was emphasized again this year in the cover letter sent with the renewal questionnaires. The importance is obvious and requires continuous attention and a coordinated effort from all involved.

Member Communications

28. Continue to emphasize good communications with members through a variety of methods.

Response to item 28: Will continue through the newsletter and increased support for questions and personal visits.

29. Consider a bulletin board or "chat" type internet site where members can post questions and comments for others to read and respond to. This might promote useful suggestions on loss control and other issues.

Response to item 29: This may be a good suggestion. However; at present, only Sonya has internet access at the office. We will look into this further after moving into the new building where internet access will be increased.

Inspections and Loss Control

30. Continue to use the excess insurer's loss control engineer to educate the counties about their exposures, identify hazards and help train UACIM's Loss Prevention Manager.

Response to item 30: Mitch Irlenborn does visit fairly regularly and we anticipate his continued assistance.

31. Provide the Loss Prevention Manager with essential tools, including (1) a loss control library, (2) training videotapes and (3) a budget for professional development.

Response to item 31: 1) although not much of a library exists now, Shawn has been reviewing materials to determine which will be most helpful; while this process continues he will assist

members in obtaining materials as needed; 2) training videos are also being reviewed and at present can be obtained through several different sources available to the Mutual on a temporary basis; and 3) professional development has always been emphasized and a more detailed budget will be prepared for the upcoming fund year, including an itemization for this category.

Formal Risk Management Program

32. Look for ways to help the counties with limited resources comply with all areas of UACIM's excellent Risk Management Program.

Response to item 32: Again, this is a very general recommendation, and unfortunately several members are already ineligible for credit under the program for the upcoming year due to failure to submit renewal materials on time. Shawn and Sonya have made significant efforts toward encouraging members in this regard. Each member was contacted or faxed a reminder prior to the deadline. The program has been discussed at most membership meetings and Shawn includes detailed information about specific areas of the program in the reports issued after visits.

Even though some members still do not qualify for the credit, most appear to have made considerable progress in the program participation in the last 2 years.

Claims Handling Procedures

Claims Audit

33. Conduct periodic claims audits using competent, independent auditors with no ties to brokers or insurers and no interest in the outcome of the audits. We recommend UACIM schedule a claims management audit within the next six months.

Response to item 33: An RFP for claims audit proposals will be prepared in the next two months.

Operations

Organizational Structure and Governing Documents

34. Try to have the sexual contact exclusion removed from UACIM's professional liability policy.

Submitted to Insurance Company for review.

Staffing

35. Clarify the position descriptions and titles for the UACIM Director and Administrator. The Director is also called the Assistant Administrator, and the Administrator is the same person as the UAC Executive Director.

36. Update the position description for the Loss Prevention Manager to reflect his involvement with personnel and law enforcement loss control.
37. Update the position description for the Executive Assistant to remove the out-of-date reference to Aon Insurance Management Services.

Response to items 35-37: The process of updating the positions is currently in progress for all UAC employees and is expected to be completed soon.

Controls and Systems

38. Consider giving limited check-signing authority to the UACIM Director to facilitate check issuance when the UAC Executive Director and/or Board members are not available.
39. Consider an off-storage location (such as a bank safe deposit box) for UACIM's valuable papers that would be difficult, or impossible, to reconstruct after a fire or other catastrophe.

Staff Professional Development

40. Plan to build a resource library on public sector risk management topics. The Loss Prevention Manager especially needs such a library for his work.

Response to item 40: This was discussed in an earlier recommendation as it pertains to loss control. In addition, the Mutual currently subscribes to a number of periodicals including the Utah Advance Reports, Utah Employment Law Letter, and publications from PRIMA , NAIC and others in the insurance industry. While these publications cover a wide variety of risk management topics, others may be helpful in the future.

41. Encourage all UACIM staff to attend at least one professional seminar or class per year.

Response to item 41: The Director and the Loss Control Manager have attended at least one seminar per year.

Major Contracts

Administrative Services Contract

42. Update the Agreement for General Administrative Services between UACIM and UAC. It currently refers to a Pool Administrator when there is no such title at UACIM. The Agreement should describe the services UAC actually provides.

Claims Administration Contract

43. Clarify in the claims administration contract the performance standards the Adjuster will be held to. At a minimum, the contract should incorporate the McLarens Toplis "Standards of Performance" document.

Response to item 43: This will be discussed with Curt Hamby of McLarens Toplis. Some items in the contract do need immediate attention. Others may be more appropriately addressed in connection with the anticipated claims audit.

Broker Services Contract

44. Require in the broker services contract that the broker prepare a written annual stewardship report.

Response to item 44: The brokers agree that this can be done, but request information about the purpose, scope and direction of the stewardship report in advance.

Preparing this report in connection with annual excess bidding would probably work well.

45. Specify in the broker services contract that UACIM has ownership of its underwriting data and insurance applications.

Response to item 45: UACIM does have the underwriting data and provides that information to the broker each year. Regarding the applications, the broker has developed a proprietary process of placing information into a format, which makes it easier for the underwriters to disseminate and rate. The entire process is something that has been developed over the past several years with considerable investment. The broker considers this format to be work product and part of the services they agreed to provide; however, they typically retain ownership of these applications.

Management Expenses

Brokerage Fees

46. Define in writing exactly how the broker will earn the bonus fee.

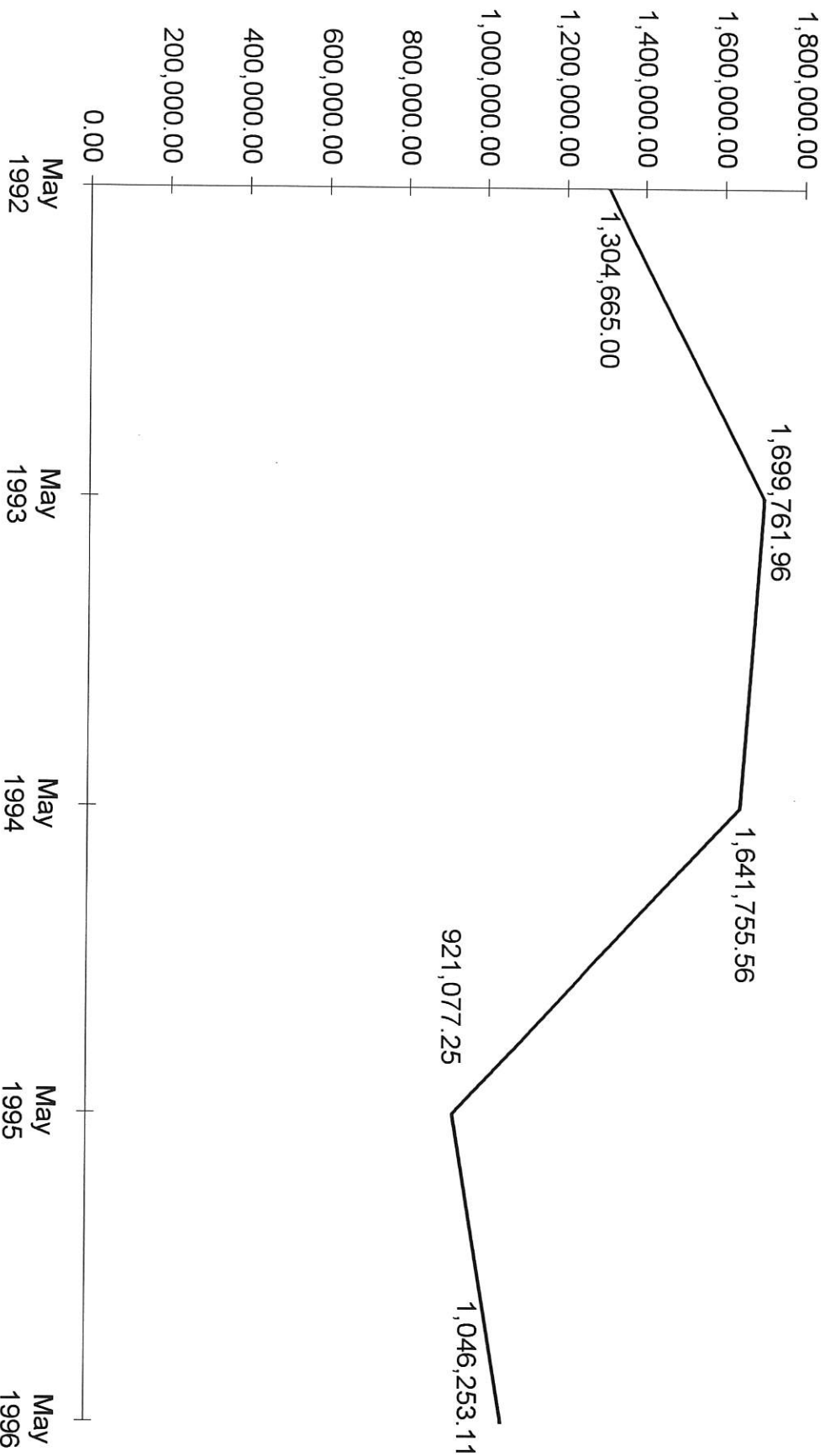
Response to item 46: The contract currently addresses fifteen items for evaluation each quarter. Narrowing the responsibilities down more than that doesn't seem useful in evaluating the brokers effectiveness or level of service for the Mutual.

47. Consider reducing the number of meetings the broker is expected to attend if this will reduce the broker's costs and fee.

Response to item 47: The broker believes that reducing the number of visits will not be cost effective in the long run. While it may be something to seriously consider at some time, one of the primary concerns in changing brokers two years ago was that there was no Gallagher office in Utah and representatives would not be here enough. The present arrangement is working quite well and at a lower cost than when the Mutual worked with a broker with a local office.

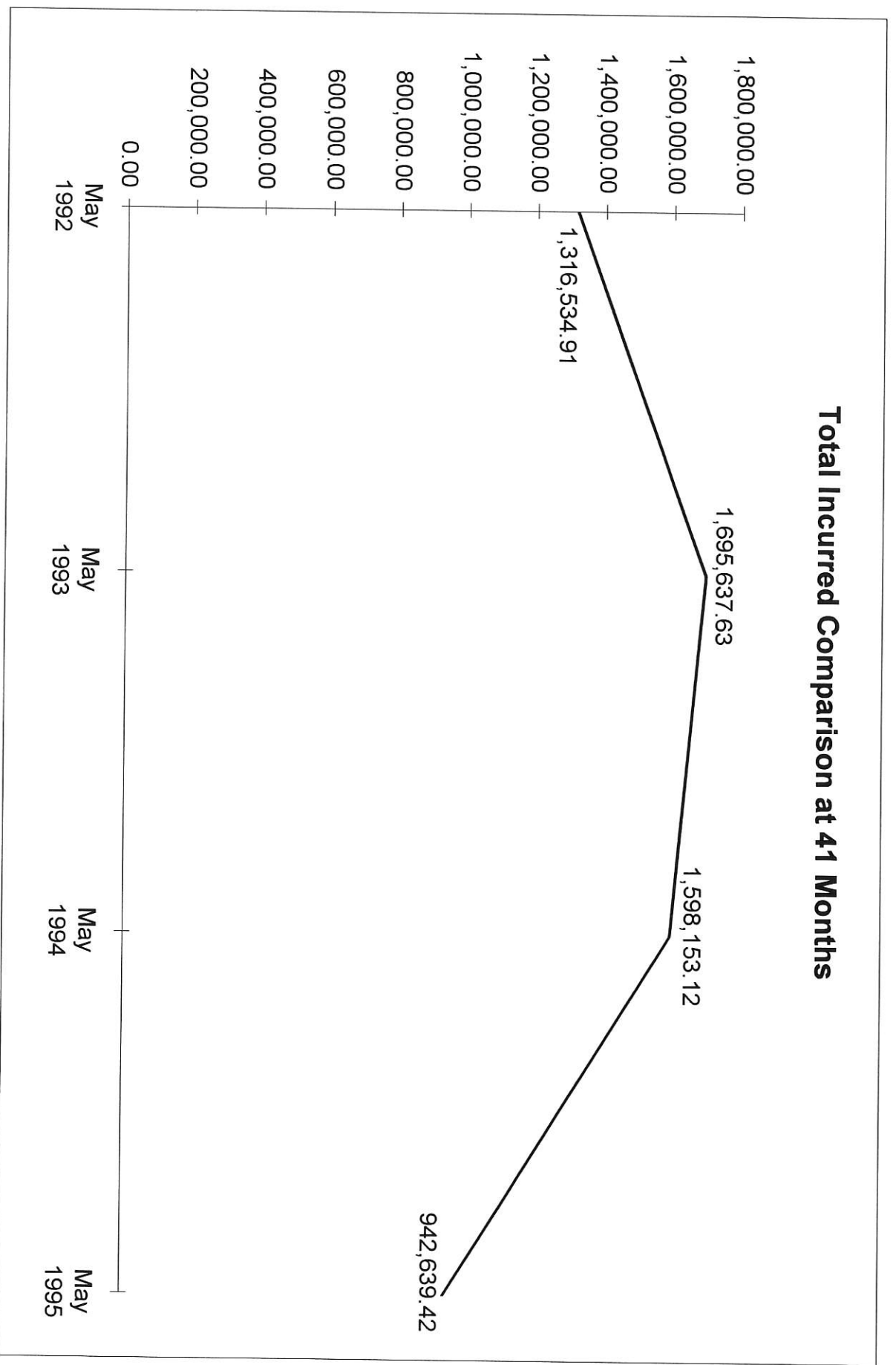
UAC Insurance Mutual

Total Incurred Comparison at 29 Months



UAC Insurance Mutual

Total Incurred Comparison at 41 Months



12-16-97 DRAFT

* PROTECTED *

1998FL-0512/001

**LAW ENFORCEMENT INTERNAL
INVESTIGATION PROCEDURES**

1998 GENERAL SESSION
STATE OF UTAH

AN ACT RELATING TO LAW ENFORCEMENT; PROVIDING RIGHTS AND PROTECTIONS FOR LAW ENFORCEMENT OFFICERS; ESTABLISHING PROCEDURES GOVERNING INVESTIGATIONS AND INTERROGATIONS OF LAW ENFORCEMENT OFFICERS BY ANY LAW ENFORCEMENT AGENCY IN THE STATE.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

77-1b-1, Utah Code Annotated 1953
77-1b-2, Utah Code Annotated 1953
77-1b-3, Utah Code Annotated 1953
77-1b-4, Utah Code Annotated 1953
77-1b-5, Utah Code Annotated 1953
77-1b-6, Utah Code Annotated 1953
77-1b-7, Utah Code Annotated 1953
77-1b-8, Utah Code Annotated 1953
77-1b-9, Utah Code Annotated 1953

Post-It™ brand fax transmittal memo 7671		# of pages ▶
To <u>Shawn Luzman</u>	From <u>Chief Maughan</u>	
Co.	Co.	
Dept. <u>9485</u>	Phone # <u>567-7269</u>	
Fax # <u>265-9495</u>	Fax # <u>561-0379</u>	

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 77-1b-1 is enacted to read:

77-1b-1. Title.

This chapter is known as the "Procedural Rights of Law Enforcement Officers Act."

Section 2. Section 77-1b-2 is enacted to read:

77-1b-2. Definitions.

As used in this chapter:

(1) "Internal investigation" means any administrative action conducted by a law enforcement officer's employer or agent of the employer for the purpose of investigating a complaint, allegation, or suspicion of wrong-doing by the officer.

(2) "Interrogation" means any interview or questioning conducted by a law enforcement officer's employer or agent of the employer for the purpose of drawing a response from the officer

1998FL-0512/001

* PROTECTED *

12-16-97 DRAFT

1 to a complaint, allegation, or suspicion of wrong-doing.

2 (3) "Officer" means all law enforcement officers as defined under Sections 77-1a-1,
3 77-1a-2, and 77-1a-5.

4 (4) "Punitive action" means any action that may lead to a law enforcement officers's
5 dismissal, demotion, suspension, reduction in salary, transfer for disciplinary purposes resulting
6 in a reduction in salary, or formal written reprimand.

7 Section 3. Section 77-1b-3 is enacted to read:

8 77-1b-3. Interrogations -- Procedures -- Recording.

9 (1) When any officer is under investigation and subject to interrogation by a commanding
10 officer or any other member of the employing agency for an alleged act that could lead to punitive
11 action, prior to any interrogation the officer shall be advised of the following:

12 (a) the nature of the complaint and the specific allegation of misconduct;

13 (b) the identity of all known complainants unless the identification of a complainant will
14 compromise the integrity or security of the investigation, or except as otherwise provided in this
15 chapter;

16 (c) the date, time, and location of the incident that gave rise to the allegation;

17 (d) whether the officer is the focus of or a witness to the investigation;

18 (e) whether the nature of the investigation is administrative, criminal, or both;

19 (f) the rank, name, and command of the officer in charge of the investigation, the
20 interrogating officers, and all other persons to be present during the interrogation;

21 (g) the statements or other evidence given by the officer in an internal investigation are
22 not admissible as evidence in any criminal prosecution;

23 (h) the officer's constitutional rights, if prior to or during the interrogation the persons
24 conducting the interrogation determine that the officer may be charged with a criminal offense, in
25 which case the officer may not be compelled to continue with the interrogation without guarantee
26 of immunity from criminal prosecution; and

27 (i) the officer's right to have upon request a representative or legal counsel, as limited in
28 Subsection (2), present with the officer during all phases of the investigation, and of the right to
29 a reasonable amount of time to obtain the representation without threat of punitive action.

30 (2)(a) The representative under Subsection (1)(i) may not be a person subject to the same
31 investigation.

12-16-97 DRAFT

* PROTECTED *

1998FL-0512/001

1 (b) Subsection (1)(i) does not apply to any discussions in the normal course of an officer's
2 duty, counseling, instruction, informal verbal admonishment, or other routine or unplanned contact
3 with a supervisor or another officer.

4 (3) The interrogation shall specifically, directly, and narrowly focus on the performance
5 of the officer's official duties or fitness for duty.

6 (4) The interrogation shall be conducted:

7 (a) by no more than two persons; and

8 (b) at a reasonable hour, preferably at a time when the officer is on duty, or during the
9 normal waking hours of the officer unless the gravity of the investigation requires otherwise.

10 (5) (a) If the interrogation occurs while the officer is off-duty, the officer shall be
11 compensated for the off-duty time in accordance with regular agency procedures, and in
12 compliance with 29 C.F.R. 201 et seq., the Fair Labor Standards Act of 1938, as amended.

13 (b) The officer may not be subject to punitive action for any work missed due to the
14 interrogation.

15 (6) (a) The interrogation session may not extend beyond a reasonable time period, taking
16 into consideration the gravity and complexity of the issue being investigated.

17 (b) The officer under interrogation shall be allowed to attend to personal physical needs.

18 (7) A person conducting the investigation may not:

19 (a) make any promise of reward or leniency as an inducement for the officer to answer any
20 questions;

21 (b) cause the officer under interrogation to be subjected to visits by the press or news
22 media, or provide the officer's home address or pictorial identification to the press or news media
23 without express consent;

24 (c) subject the officer under investigation to offensive language or threaten punitive action,
25 except that an officer refusing to respond to questions or submit to interrogations shall be informed
26 that failure to answer questions narrowly and directly related to the officer's official duties or
27 fitness for duty may result in punitive action; or

28 (d) take any punitive action for a failure, upon request, to agree to submit to a polygraph
29 examination.

30 (8) (a) A discussion or interrogation, informal or otherwise, may not take place without

NO WAY

1998FL-0512/001

* PROTECTED *

12-16-97 DRAFT

1 being recorded.

2 (b) The officer shall be given access to the tape not less than five days prior to any further
3 proceedings or interrogation.

4 (c) The officer is entitled to a transcription of any notes made by a stenographer or to any
5 reports or complaints made by investigators or other person, except those the investigating agency
6 designates as confidential.

7 (d) The officer being interrogated may bring a recording device and record any and all of
8 the interrogation, and in all cases is entitled upon request to a copy of any recording made of the
9 interrogation to be provided at the officer's own expense.

10 (9) The investigating agency may designate as confidential the identity of confidential
11 informants.

12 Section 4. Section 77-1b-4 is enacted to read:

13 **77-1b-4. Administrative appeals -- Procedures.**

14 (1) An officer may not be subject to punitive action or denial of promotion on grounds
15 other than merit without first being provided with an opportunity for administrative appeal.

16 (2) Prior to taking punitive action against an officer, the employing law enforcement
17 agency shall provide to the officer:

18 (a) a written notice of charges;

19 (b) a statement of the grounds for the charges and the supporting evidence; and

20 (c) an opportunity to respond to the charges.

21 (3) The administrative appeal process shall provide, at a minimum, the following
22 procedural safeguards:

23 (a) the officer shall have the right to confront and cross-examine the employing agency's
24 witnesses, to call witnesses in the officer's own behalf, and to give rebuttal evidence to the charges;

25 (b) the officer shall have the right to be represented by counsel;

26 (c) the appeal shall be heard by an impartial trier of fact who has the authority to affirm
27 or reverse the action of the employing law enforcement agency, except as otherwise provided by
28 statute;

29 (d) a complete and accurate record shall be made of the proceedings;

30 (e) the decision of the trier of fact shall be based solely upon the evidence presented at the
31 hearing; and

12-16-97 DRAFT

* PROTECTED *

1998FL-0512/001

1 (f) any evidence adduced at the administrative hearing may not be used as the basis for
2 new or additional charges of misconduct.

3 (4) An officer may not be subjected to punitive action, discrimination in any aspect of
4 employment, denied promotion, or threatened with any of these because of the lawful exercise of
5 these rights or the rights under any existing administrative grievance procedure.

6 Section 5. Section 77-1b-5 is enacted to read:

7 77-1b-5. Personnel file -- Entries -- Responses.

8 (1) A comment adverse to an officer's employment interest may not be entered into the
9 officer's personnel file or any other file used for personnel purposes by the employing agency
10 without the officer having first read and signed the instrument containing the adverse comment,
11 indicating that the officer is aware of the comment.

12 (2) (a) The entry under Subsection (1) may be made if, after reading the instrument, the
13 officer refuses to sign it.

14 (b) The officer's refusal to sign shall be noted on the instrument.

15 (3) (a) An officer has ten working days within which to file a written response to any
16 adverse comment entered into the officer's personnel file.

17 (b) The written response shall be attached to and accompany the adverse comment.

18 Section 6. Section 77-1b-6 is enacted to read:

19 77-1b-6. Polygraph examinations -- Evidence.

20 (1) An officer may not be compelled to submit to a polygraph examination and punitive
21 action may not be taken against an officer who refuses to submit to a polygraph examination.

22 (2) An investigator may not enter comments in notes or elsewhere that the officer refused
23 to submit to a polygraph examination.

24 (3) Testimony or evidence is not admissible at any judicial or administrative hearing, trial,
25 or proceeding to the effect that the officer submitted to or refused to submit to a polygraph
26 examination.

27 Section 7. Section 77-1b-7 is enacted to read:

28 77-1b-7. Personal information.

29 An officer may not be required or requested, for the purpose of job assignment or other
30 personnel action, to disclose any information regarding the officer's property, income, assets,

May-04-98 04:15P Perry F ckner

967-4333

1998FL-0512/001

* PROTECTED *

12-16-97 DRAFT

1 sources of income, debts, or personal or domestic expenditures, including those of any member
2 of the officer's family or household, unless the information:

3 (1) is obtained or required under state law or through a legal proceeding; or

4 (2) tends to indicate a conflict of interest with respect to the performance of the officer's
5 official duties.

6 Section 8. Section 77-1b-8 is enacted to read:

7 **77-1b-8. Off-duty political activity.**

8 An officer may not be prohibited from engaging in political activity when the officer is
9 off-duty except as otherwise provided by law.

10 Section 9. Section 77-1b-9 is enacted to read:

11 **77-1b-9. District court -- Jurisdiction -- Remedies.**

12 (1) The district court has initial jurisdiction over any proceedings brought by an officer
13 against any law enforcement agency for alleged violations of this chapter.

14 (2) When a district court finds that a law enforcement agency has violated any provision
15 of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy
16 the violation and to prevent further violations of a similar nature, including:

17 (a) excluding from any administrative, criminal, or other proceeding, any and all evidence
18 obtained by the law enforcement agency in violation of this chapter; and

19 (b) granting a temporary restraining order or a preliminary or permanent injunction
20 prohibiting the agency from taking any punitive action against the officer.

Legislative Review Note

as of 12-17-97 8:09 AM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

May-04-98 04:16P Perry Backner

**Law Enforcement Internal Investigation Procedures
Notes**

1. Should it be limited to "internal" investigations ?
DA's Office
FBI
US Attorney
2. Interrogation:
"Drawing a response" seems too limited. What if agency claims "confirmation of information" was purpose, whether officer responds or not.
Limited to Garrity interviews.
3. 77-16-3
(1) Strike "under investigation";
(a) Add "in writing";
4. 2(b) Why is this necessary since it would not be an "interrogation" under 77-1b-2(2)
5. Strike 5(a) reference to FLSA.
6. Strike 8(a) "A discussion" too broad.
7. Strike 8(b) "less than 5 days" add "Officer or his/her representative shall" or transcript thereof...
8. 8 (c) add: "Officer shall be given copies of his reports & statements"
9. 77-1b-4
(1) "Administrative appeal" what form? UAPA? Merit Commission?
2 (c) add "legal counsel"
3 (b) add "legal counsel"
3 (a) Compel attendance of witness? Administer Oaths?
Receive evidence? Written decision? Due process? Rules of Evidence?
Burden of proof?
4. Strike "grievance" and add "appeal".
10. 77-1b-7
What about other privacy rights?
11. 77-1b-9
Attorney's fees?
Monetary damages for due process violation?

**RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF AN
INTERLOCAL COOPERATION AGREEMENT RELATING TO THE USE OF A
UTAH COUNTY EMPLOYEE IN AN ACCIDENT INVESTIGATION
INVOLVING ANOTHER UTAH ASSOCIATION OF COUNTIES INSURANCE
MUTUAL COUNTY**

WHEREAS, pursuant to the provisions of the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated, 1953 as amended, public agencies, including political subdivisions of the State of Utah as therein defined, are authorized to enter into mutually advantageous agreements to provide services and facilities; and

WHEREAS, the Board of Trustees of Utah Association of Counties Insurance Mutual has determined that the interests and welfare of its members will best be served by an Interlocal Cooperation Agreement with Utah County relating to the use of a Utah County employee in an accident investigation involving another Utah Association of Counties Insurance Mutual county.

NOW, THEREFORE, be it resolved by the UACIM Board of Trustees to approve and authorize the Vice-President of the Utah Association of Counties Insurance Mutual to execute an Interlocal Cooperation Agreement for the use of a Utah County employee in an accident investigation involving another Utah Association of Counties Insurance Mutual county.

APPROVED AND ADOPTED this _____ day of _____, 1998.

BOARD OF TRUSTEES
UTAH ASSOCIATION OF COUNTIES INSURANCE MUTUAL

By: _____
VICE-PRESIDENT

ATTEST:

By: _____
SECRETARY/TREASURER

